

## KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

**Topic:** Applications of Waiver of Administrative Regulations from the Mayfield and Somerset Independent School Districts as well as the Bell, Carroll, Christian, Daviess, Graves, Harlan, Henry, Hopkins, Knott, Leslie, Owsley, Pulaski, Simpson and Trimble County School Districts

**Date:** February 2020

**Action Requested:** ☐ Review ☐ Action/Consent ☒ Action/Discussion

**Held In:** ☐ Full Board ☒ Curriculum, Instruction and Assessment ☐ Operations

### SUMMARY OF ISSUE BEFORE THE BOARD:

To take action on the Application of Waiver of Administrative Regulations from the Mayfield and Somerset Independent school districts as well as the Bell, Carroll, Christian, Daviess, Graves, Harlan, Henry, Hopkins, Knott, Leslie, Owsley, Pulaski, Simpson and Trimble County school districts. These 16 applications request waiver of 701 KAR 8:020, Section 3(4) relating to annual training for charter school authorizers in Kentucky. KRS 156.160(2) grants the Kentucky Board of Education (KBE) authority to waive its own regulations at the request of a local school district superintendent and establishes the parameters for doing so.

### COMMISSIONER'S RECOMMENDATION:

The Interim Commissioner recommends the KBE conditionally approve each district's Application of Waiver of Administrative Regulations seeking waiver of 701 KAR 8:020, Section 3(4) until June 30, 2021 or until the district receives a charter application, as defined in KRS 160.1590(4), whichever occurs first. Any district receiving a charter application, as defined in KRS 160.1590(4), shall fully comply with 701 KAR 8:020, Section 3(4) within ten (10) calendar days of receiving such application.

The Interim Commissioner also recommends the KBE prospectively and conditionally approve any future waiver of 701 KAR 8:020, Section 3(4) requested by letter to the Interim Commissioner from a superintendent in one of the 156 school districts not named in this staff note. This prospective, conditional approval would be granted until June 30, 2021 or until the district receives a charter application, as defined in KRS 160.1590(4), whichever occurs first. Any district receiving a charter application, as defined in KRS 160.1590(4), shall fully comply with 701 KAR 8:020, Section 3(4) within ten (10) calendar days of receiving such application.

### APPLICABLE STATUTE OR REGULATION:

KRS 156.160(2) and 701 KAR 8:020, Section 3(4).

### BACKGROUND:

*Existing Policy:*

KRS 156.160(2) states:

“(a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include but are not limited to the following:

1. An alternative approach will achieve the same result required by the administrative regulation;
2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
3. There is a finding of good cause for the waiver.

(b) The following shall not be subject to waiver:

1. Administrative regulations relating to health and safety;
2. Administrative regulations relating to civil rights;
3. Administrative regulations required by federal law; and
4. Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the grade configuration of schools.

(c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.”

Additionally, 701 KAR 8:020, Section 3(4) states: “The authorizer, or its designee for charter authorizing, shall participate in annual in-service training as follows:

(a) Each authorizer or member of the authorizer’s board of directors or governing board of the authorizer shall complete:

1. Twelve (12) hours of annual training for an authorizer or member with zero to eight (8) years of experience as an authorizer and eight (8) hours for an authorizer or a member with more than eight (8) years of experience as an authorizer; or
2. Competency-based annual in-service training;

(b) In-service training toward the board of education member training requirements of KRS 160.180 may also count toward this requirement, to the extent the requirements of both are met by the content of the training, and the training for this requirement shall include the following topics of authorizer responsibility and charter school formation and operation:

1. Financial governance and transparency;
2. Conflict of interest;
3. Charter application;

4. Charter school contracting;
5. Charter school monitoring;
6. Charter school renewal, nonrenewal, and revocation;
7. Charter school closure;
8. Ethics;
9. Curriculum and instruction;
10. Educational services provided for special needs, at risk, English learner, gifted, and other special population students; and
11. Physical restraint and seclusion of students; and

(c) The training shall be approved by the commissioner of education.”

*Summary of Issue:*

(1) Application of Waiver of Administrative Regulations from the Mayfield Independent school district:

Mayfield Independent submitted the Application of Waiver of Administrative Regulations, which is dated November 18, 2019, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Mayfield Independent states that required training for charter school authorizers “puts a hardship” on board members being able to receive “training that is most applicable to the current governance of the district.” The district also states that waiver of annual training requirements for charter school authorizers will also “ensure that...time, energy and focus remains on serving” the district’s 2,000 students.

The application also states, “If the Mayfield Board of Education were to receive a charter application, then more intensive and specific training and on-going consultation will be immediately sought from KDE, KSBA, and the WKEC co-op. This is the same type of training that is used by SBDM councils for selecting a principal.”

(2) Application of Waiver of Administrative Regulations from the Somerset Independent school district:

Somerset Independent submitted the Application of Waiver of Administrative Regulations, which is dated November 12, 2019, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Somerset Independent states that required training for charter school authorizers “puts a hardship” on board members being able to receive “training that is most applicable to the current governance of (the) district and lessens...efforts to focus on and advance student achievement.”

The application also states, “If and when the Somerset Independent Board of Education receives a charter school application, then more intensive and specific training and on-going consultation

will be immediately sought from KDE, KSBA, the KEDC co-op, and other applicable professional organizations...This training as applicable model is the same model employed by SBDM councils for the principal selection process.”

(3) Application of Waiver of Administrative Regulations from the Bell County school district:

Bell County submitted the Application of Waiver of Administrative Regulations, which is dated January 7, 2020, requesting the KBE waive “701 KAR 8:020 Section 3(a)1.,” which Kentucky Department of Education (KDE) staff determined was actually a request to waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Bell County states, “There has been no individual or group who has voiced interest relative to forming a charter school.” In its Application of Waiver of Administrative Regulations, Bell County also asserts, “Any talk of creating a charter school would not get off the ground in this environment.”

(4) Application of Waiver of Administrative Regulations from the Carroll County school district:

Carroll County submitted the Application of Waiver of Administrative Regulations, which is dated September 27, 2019, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky. The KBE previously denied this Application of Waiver of Administrative Regulations at its meeting on December 4, 2019; however, this application is being returned to the KBE for reconsideration in light of the Interim Commissioner’s recommendation for conditional approval.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Carroll County states that the regulation is “burdensome to board members;” training required by 701 KAR 8:020, Section 3(4) “could and should be integrated into existing training requirements” for board members in KRS 160.180 and 702 KAR 1:115; and, training required by 701 KAR 8:020, Section 3(4) “exceeds the quality content available.”

As additional justification for requesting waiver of 701 KAR 8:020, Section 3(4), the district states, “It is not likely that Carroll County would branch out into charter schools.” In its Application of Waiver of Administrative Regulations, the district also notes its collaboration with four other districts and the Ohio Valley Education Cooperative to create the “I-Lead” academy and asserts, “Each of the 5 boards collaborated to develop and implement the I-Lead Academy without required arduous Charter School training.”

(5) Application of Waiver of Administrative Regulations from the Christian County school district:

Christian County submitted the Application of Waiver of Administrative Regulations, which is dated January 16, 2020, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Christian County states that the regulation “puts a hardship on the members in receiving training that is most applicable to the current governance of the district” and “really takes the focus off of the advancement of student achievement in (the) district.’ The district also asserts that waiver of 701 KAR 8:020, Section 3(4) will also “ensure that...time, energy and focus remains on serving...8,700 students in Christian County.”

The application also states, “If the Christian County Board of Education were to receive a charter school application, then more intensive and specific training and on-going consultation will be immediately sought from KDE, KSBA and the GRECC co-op. This is the same type training that is used by SBDM councils for selecting a principal.”

(6) Application of Waiver of Administrative Regulations from the Daviess County school district:

Daviess County submitted the Application of Waiver of Administrative Regulations, which is dated January 14, 2020, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Daviess County states that the regulation “places a hardship on school board members in receiving training that is most applicable to the current governance of the district” and “really takes the focus off of advancing student achievement in (the) district.’ The district also asserts that waiver of 701 KAR 8:020, Section 3(4) will also “ensure that...time, energy, and focus remains on serving...11,700 students in Daviess County.”

The application also states, “If the Daviess County Board of Education were to receive a charter school application, then more intensive and specific training and on-going consultation will be immediately sought from the KDE, KSBA, and GRECC. This is the same type of training that is used by SBDM councils for selecting a principal.”

(7) Application of Waiver of Administrative Regulations from the Graves County school district:

Graves County submitted the Application of Waiver of Administrative Regulations, which is dated November 14, 2019, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky. The KBE previously denied this Application of Waiver of Administrative Regulations at its meeting on December 4, 2019; however, this application is being returned to the KBE for reconsideration in light of the Interim Commissioner’s recommendation for conditional approval.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Graves County states that required training for charter school authorizers “puts a hardship” on board members being able to receive “training that is most applicable to the current governance of the district.” As additional justification for requesting waiver of 701 KAR 8:020, Section 3(4), the district asserts required charter authorizer training shifts the board’s focus “away from the advancement of student achievement” and from serving “3,960 students in Graves County.”

The application also states, “If the Graves County Board of Education were to receive a charter school application, then more intensive and specific training and on-going consultation will be immediately sought from KDE, KSBA and the WKEC co-op. This is the same type of training that is used by SBDM councils for selecting a principal.”

(8) Application of Waiver of Administrative Regulations from the Harlan County school district:

Harlan County submitted the Application of Waiver of Administrative Regulations, which is dated November 21, 2019, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Harlan County states that the regulation “has added a financial burden to the district” in the form of “training registration costs, travel reimbursements and lodging expenses for school board members.” The district also cites a “hardship on local elected school board members due to their time away from jobs and the resulting loss of income” as a reason for requesting waiver of 701 KAR 8:020, Section 3(4).

As additional justification, the district asserts that requirements in 701 KAR 8:020, Section 3(4) preempt board members from taking professional development in other subject matters “more valuable to the board member, as well as the school district,” including “Policy and Procedure, School Facilities, Construction/General Contracting, Liability & Insurance Requirements and Media/Community Relations.” According to the district, a lack of diversity in board member training prevents board members from receiving “a well-rounded curriculum, thereby impairing their ability to make effective decisions for students and staff,” and precludes the opportunity for board members to advance in the Kentucky School Boards Association (KSBA) Academy of Studies. According to the KSBA website, the Academy of Studies is intended to guide board members “through the information and skills they need to make their jobs less overwhelming and make them, and their board team, more effective.” KSBA also publicly recognizes board members for their progress within its Academy of Studies.

The application also recommends the language of 701 KAR 8:020, Section 3(4) be revised to state, “The authorizer, or its designee for charter authorizing, shall participate in annual in-service training once the school district contains a Charter School or has received a Charter School application.”

(9) Application of Waiver of Administrative Regulations from the Henry County school district:

Henry County submitted the Application of Waiver of Administrative Regulations, which is dated January 6, 2020, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Henry County states that the regulation is “burdensome to board members, especially ‘seasoned’ board members,” and that, due to the training required by 701 KAR 8:020, Section 3(4), “some...board members considered resigning.” Were existing board members to resign, the district is concerned it would

not be “able to find new board members in a rural community.”

As additional justification for requesting waiver of 701 KAR 8:020, Section 3(4), the district states that the training required by 701 KAR 8:020, Section 3(4) “exceeds the quality content available” and states, “The likelihood that Henry County would have to authorize a charter is extremely slim to none.” In its Application of Waiver of Administrative Regulations, the district also notes its collaboration with four other districts and the Ohio Valley Education Cooperative to create the iLead Academy and asserts, “Each of the 5 boards collaborated, developed, and implemented the i-LEAD Academy without the required arduous charter school training.”

(10) Application of Waiver of Administrative Regulations from the Hopkins County school district:

Hopkins County submitted the Application of Waiver of Administrative Regulations, which is dated January 13, 2020, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Hopkins County states that the regulation “puts a hardship on the members in receiving training that is most applicable to the current governance of the district.” The district also asserts that waiver of 701 KAR 8:020, Section 3(4) will also “ensure that...time, energy, and focus remains on serving...6,500 students in Hopkins County.”

The application also states, “If the Hopkins County Board of Education were to receive a charter school application, then more intensive and specific training and on-going consultation will be immediately sought from KDE, KSBA, and the Green River Rural Educational Cooperative. This is the same type of training that is used by SBDM councils for selecting a principal.”

(11) Application of Waiver of Administrative Regulations from the Knott County school district:

Knott County submitted the Application of Waiver of Administrative Regulations, which is dated January 14, 2020, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Knott County states that the regulation “has caused hardship...and is hindering the ability of (the) board to undertake development and training on other topics of great relevance to the governance of (the) district.” The district also notes that it desires to “focus more...attention on needs and requirements of all our students right now and not be distracted by additional training on something that may never happen in Knott County.”

As additional justification for requesting waiver of 701 KAR 8:020, Section 3(4), the district states, “There is no requirement for members of local school boards to receive training specific to their role as a charter authorizer through the statute. When the General Assembly enacted the charter school law in 2017, without including such a specific training requirement for

authorizers, it is likely because they were aware of the general training board members already receive...under statutes passed by the General Assembly.”

The application also states, “I would suggest such training by conducive with SBDM Members on principal selection...By providing such training at the time and in conjunction with actual consideration of an application, could even be more beneficial to the board, and in fact, it is likely that any board would undertake such on-the-spot training when considering an application in addition to any annual training they had already received on this topic, given its importance and complexity. Therefore, waiving annual training on this topic unless and until an application is being considered would be as or more effective to meet the intent of the regulation, while also being more cost effective and time efficient.”

(12) Application of Waiver of Administrative Regulations from the Leslie County school district:

Leslie County submitted the Application of Waiver of Administrative Regulations, which is dated December 16, 2019, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Leslie County states that the regulation “has added an additional cost of \$4,000 to the district” in the form of “training registration costs, travel reimbursements and lodging expenses for school board members” and states, “These additional costs place a financial burden on a district of our size, which has a small tax base as well as a declining enrollment.” The district also cites a “hardship on...local elected school board members due to their time away from jobs and the resulting loss of income” as a reason for requesting waiver of 701 KAR 8:020, Section 3(4).

As additional justification, the district states that training required for charter school authorizers preempts board members from taking professional development in other subject matters “more valuable to the board member, as well as the school district,” including “Policy and Procedure, School Facilities, Construction/General Contracting, Liability & Insurance Requirements and Media/Community Relations.” According to the district, a lack of diversity in board member training prevents board members from receiving “a well rounded curriculum, thereby impairing their ability to make effective decisions for students and staff,” and precludes the opportunity for board members to advance in the KSBA Academy of Studies, which is described in more detail in subsection (8) above.

The application also states, “The Leslie County Board of Education feels that the Kentucky Administrative Regulation pertaining to mandatory Charter School training for local School Board Members should be specific and applicable to school districts that contain Charter Schools or have received Charter School applications within their representative district.”

(13) Application of Waiver of Administrative Regulations from the Owsley County school district:

Owsley County submitted the Application of Waiver of Administrative Regulations, which is dated January 8, 2020, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to



annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Owsley County states that the regulation “has added a financial burden to the district” in the form of “training registration costs, travel reimbursements and lodging expenses for school board members.” The district also cites a “hardship on local elected school board members due to their time away from jobs and the resulting loss of income” as a reason for requesting waiver of 701 KAR 8:020, Section 3(4).

As additional justification, the district states that training required for charter school authorizers is not “beneficial” to its school board, which has not received a charter school application, and asserts that requirements in 701 KAR 8:020, Section 3(4) preempt board members from taking professional development in other subject matters “more valuable to the board member, as well as the school district,” including “Policy and Procedure, School Facilities, Construction/General Contracting, Liability & Insurance Requirements and Media/Community Relations.” According to the district, a lack of diversity in board member training prevents board members from receiving “a well-rounded curriculum, thereby impairing their ability to make effective decisions for students and staff,” and precludes the opportunity for board members to advance in the KSBA Academy of Studies, which is described in more detail in subsection (8) above.

The application also recommends the language of 701 KAR 8:020, Section 3(4) be revised to state, “The authorizer, or its designee for charter authorizing, shall participate in annual in-service training once the school district contains a Charter School or has received a Charter School application.” Additionally, the application states, “The Owsley County Board of Education feels that the Kentucky Administrative Regulation pertaining to mandatory Charter School training for local School Board Members should be specific and applicable to school districts that contain Charter Schools or have received Charter School applications within their representative district.”

(14) Application of Waiver of Administrative Regulations from the Pulaski County school district:

Pulaski County submitted the Application of Waiver of Administrative Regulations, which is dated January 3, 2020, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Pulaski County states that the regulation “puts a hardship” on board members “receiving training that is most applicable to the current governance of (the) district and lessens...efforts to focus on and advance student achievement.”

As additional justification, the district states that waiver of 701 KAR 8:020, Section 3(4) will allow the district to prioritize its “time, effort, and resources in serving...8,500+ students.”

The application also states, “If the Pulaski County Board of Education receives a charter school application then more intensive training and consultation will be sought from KDE, KSBA, and

other applicable professional organizations...This training as applicable model is the same model employed by SBDM councils for the principal selection process.”

(15) Application of Waiver of Administrative Regulations from the Simpson County school district:

Simpson County submitted the Application of Waiver of Administrative Regulations, which is dated October 29, 2019, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Simpson County states that the regulation “puts a hardship” on board members “receiving training that is most applicable to the current governance of (the) district” and “takes focus off of the advancement of student achievement in (the) district.”

As additional justification, the district states that waiver of 701 KAR 8:020, Section 3(4) will allow the district to prioritize its “time, energy and focus...on serving” the district’s 3,000 students.

The application also states, “If the Simpson Co. Board of Education were to receive a charter school application, then more intensive and specific training and on-going consultation will be sought from KDE, KSBA, and the GRECC co-op. This is the same type training that is used by SBDM councils for selecting a principal.”

(16) Application of Waiver of Administrative Regulations from the Trimble County school district:

Trimble County submitted the Application of Waiver of Administrative Regulations, which is dated October 16, 2019, requesting the KBE waive 701 KAR 8:020, Section 3(4) pertaining to annual training for charter school authorizers in Kentucky. The KBE previously denied this Application of Waiver of Administrative Regulations at its meeting on December 4, 2019; however, this application is being returned to the KBE for reconsideration in light of the Interim Commissioner’s recommendation for conditional approval.

As justification for requesting waiver of 701 KAR 8:020, Section 3(4), Trimble County states that training required for charter school authorizers “exceeds the quality content available” and is “burdensome” to board members since “most...that serve, work full time jobs, have family responsibilities and attend numerous school functions in addition to the monthly board meetings.” The district further asserts that “quality board members whom are well rounded in home and community engagements are very discouraged by the additional requirement” and that “in a small rural community such as Trimble County, it is difficult to find community members that can give this additional amount of time to their already full plates.”

As additional justification for requesting waiver of 701 KAR 8:020, Section 3(4), the district states, “It is not likely that Trimble County would branch out into charter schools.” In its Application of Waiver of Administrative Regulations, the district also notes its collaboration

with four other districts and the Ohio Valley Education Cooperative to create the “I-Lead” academy and asserts, “Each of the 5 districts’ school boards, collaborated to develop and implement the iLEAD Academy without required arduous Charter School training.”

(17) Recommendation to approve the Applications of Waiver of Administrative Regulation:

The Interim Commissioner recommends the districts’ Application of Waiver of Administrative Regulations seeking waiver of 701 KAR 8:020, Section 3(4) be conditionally approved by the KBE until June 30, 2021 or until the district receives a charter application, as defined in KRS 160.1590(4), whichever occurs first. Any district receiving a charter application, as defined in KRS 160.1590(4), shall fully comply with 701 KAR 8:020, Section 3(4) within ten (10) calendar days of receiving such application. This conditional approval is recommended in light of the justifications provided by each of the 16 school districts in the Application of Waiver of Administrative Regulations, particularly the assertion that “an alternative approach will achieve the same result required by” 701 KAR 8:020, Section 3(4) as contemplated by KRS 156.160(2)(a)1.

For consistency and equity statewide, the Interim Commissioner also recommends the KBE prospectively and conditionally approve any future waiver of 701 KAR 8:020, Section 3(4) requested by letter to the Interim Commissioner from a superintendent in one of the 156 school districts not named in the staff note. This prospective approval would be until June 30, 2021 or until the district receives a charter application, as defined in KRS 160.1590(4), whichever occurs first. Any district receiving a charter application, as defined in KRS 160.1590(4), shall fully comply with 701 KAR 8:020, Section 3(4) within ten (10) calendar days of receiving such application.

*Budget Impact:*

There is no budget impact to the KDE or KBE associated with waiving 701 KAR 8:020, Section 3(4) relating to annual training for charter school authorizers in Kentucky; however, additional staff time may be required to ensure all districts comply with the terms of any conditional approval issued by the KBE.

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**Interim Commissioner of Education**

Category: <input checked="" type="checkbox"/> District Innovation <input type="checkbox"/> Strengthening Educators <input type="checkbox"/> Family/Community Involvement <input type="checkbox"/> Student/Family Supports <input type="checkbox"/> Student Interventions <input type="checkbox"/> Coursework Completion <input type="checkbox"/> Accountability Reporting
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